

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

JESUS LUGO,)	
)	
Petitioner,)	
)	
vs.)	CIV-05-1268-F
)	
JUSTIN JONES, Director, ¹)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner has filed a motion for leave to proceed *in forma pauperis* and supporting affidavit. Having reviewed said motion and affidavit, the undersigned finds that Petitioner has sufficient financial resources to pay the filing fee. Because he does not qualify for authorization to proceed without prepayment of the filing fee, Petitioner's motion should be denied, and he should be required to pay the full filing fee for this action to proceed.

RECOMMENDATION

Based on the foregoing findings, it is recommended that the motion for leave to proceed *in forma pauperis* be DENIED and the action be dismissed without prejudice unless

¹The state officer having custody of the applicant is the properly-named respondent in a federal habeas action. Rule 2, Rules Governing Section 2254 Cases in the United States District Courts. Since the filing of this action, Justin Jones has been appointed as the Director of the Oklahoma Department of Corrections ("DOC"). Thus, Justin Jones, the new Director of DOC, has been substituted as the Respondent. Fed. R. Civ. P. 25(d)(1). Accordingly, Edward Evans and the Oklahoma Attorney General should be dismissed as Respondents.

Petitioner pays the full filing fee to the Clerk of the Court by November 23, 2005.

Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by November 23, 2005, in accordance with 28 U.S.C. §636 and LCvR 72.1. Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 3rd day of November, 2005.


GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE